

REMARKS

Applicants respond herein to each of the issues raised in the Office Action. Applicants appreciate the indication of allowance of Claims 12-20, 34-43 and 45 and the indication of patentable subject matter in Claims 5-11 and 24-33. Claims 21, 33 and 44 have been amended to correct typographical errors. The rejected claims have not been amended to the form indicated as allowable as Applicants submit these claims are allowable for the reasons discussed below.

Information Disclosure Statement Filed November 06, 2001:

Applicants appreciate the Examiner's returning initialed copies of three of the four Information Disclosure Statements (IDSs) filed in this matter. However, an initialed PTO-1449 form was not returned for the IDS filed November 6, 2001. A copy of the November 6, 2001 IDS is attached for the Examiner's reference along with a copy of the stamped postcard showing receipt thereof by the United States Patent Office on February 4, 2002. Applicants request that the Examiner return a copy of the PTO-1449 showing consideration of the references listed thereon with any subsequent communication in this matter.

Objections to the Claims:

The Office Action objects to Claim 1 based on a typographical error. Office Action, p. 2. Applicants appreciate the Examiner's noting of the error and the misspelling has been corrected in the amendment to Claim 1 above. Claim 44 has been amended as well to correct the spelling of "hopping" therein. Accordingly, Applicants request withdrawal of the objection to Claim 1.

The Section 112 Rejections:

Claims 1-4 stand rejected under 35 U.S.C. § 112, second paragraph as indefinite. Office Action, p. 2. More particularly, Claim 1 is rejected, apparently because it "only recites a **single step** without any additional **step(s)**." Office Action, p. 2 (emphasis in original). The dependent Claims 2-4 appear to be rejected based on an alleged requirement that they each

recite "additional method steps." Office Action, p. 2. Applicants respectfully submit that there are no such requirements and that these rejections are unfounded. The *Ex parte Erlich* case cited in the Office Action does **not** require multiple steps in this case nor does it impose any of the alleged requirements on dependent claims.

With respect to the rejection based on a single step method, applicants are aware of no statutes, case law or even rules of the Patent Office imposing such a requirement. In fact, 37 C.F.R. § 1.74 (Claim(s)) specifically states that "[w]here a claim sets forth a plurality of elements or steps, each element or step of the claim should be separate by a line indentation." 37 C.F.R. § 1.74(i)(emphasis added). It necessarily follows that no such requirement of multiple steps can exist.

With respect to the dependent claims, Applicants are, again, unaware of any such requirement that a dependent method claim add an additional step. The only requirement Applicants are aware of is that dependent claims must be "further limiting another claim or claims in the same application." 37 C.F.R. § 1.74(c). Each of dependent Claims 2-4 are further limiting of Claim 1.

Applicants respectfully request withdrawal of the Section 112 rejections of Claims 1-4 as lacking a legal basis. Should these rejections not be withdrawn, Applicants request citation of supporting statutory or case law authority for the rejections.

The Prior Art Rejections:

Claims 1, 21 and 44 stand rejected under 35 U.S.C. § 102(e) as anticipated by United States Patent Application No. 2002/0065625 to Xydis ("Xydis"). Office Action, p. 3. Claims 22 and 23 stand rejected under 35 U.S.C. § 103 as obvious over Xydis. Applicants submit that the claims are patentable over Xydis at least as Xydis does not disclose selection of a frequency hopping mode based on a transmission scheme as discussed more fully below.

Applicants note that Xydis was filed after the present application. However, Xydis claims priority to a provisional application filed before the present application. For purposes of this response, Applicants have assumed that the provisional application is identical to the published application. However, Applicants have not seen the provisional application and,

accordingly, are not agreeing that the disclosure of Xydis even qualifies as prior art to the present application.

The Office Action asserts that paragraph 22 of Xydis discloses selection of a frequency hopping mode "based on a transmission scheme, i.e. analog or digital modulation, of the plurality of transmission schemes, i.e. analog and digital modulations selected for the communication see paragraph 0022." Office Action, p. 3. Paragraph 22 of Xydis, in its entirety, recites as follows:

The subject invention utilizes a communication technique referred to as frequency hopping spread spectrum to establish communication between the first and the second electronic devices 12, 14. **Spread spectrum is a type of modulation that scatters data 44 transmissions across the available frequency band in a 'pseudo random' pattern.** The data 44 is transmitted in a plurality of radio frequency (RF) signals. Spreading of the data 44 requires a pseudo noise (PN) code generator to select the frequencies for transmission and reception. **The PN code generator hops the system over a band of frequencies. The frequency hopped system can use analog or digital modulation** and can be designed using conventional narrow band radio techniques. De-hopping in the receiver 24 is done by a synchronized pseudo noise code generator to that of the transmitter 20.

Xydis, Paragraph 22 (emphasis added).

Applicants respectfully submit the frequency hopping discussed in the above excerpt of Xydis is, essentially, a conventional code division multiple access (CDMA) transmission scheme. As such, there is no distinction between frequency hopping and a transmission scheme as recited in independent Claims 1, 21 and 44. The Office Action appears to be relying on analog and digital modulation as disclosing multiple transmission schemes in the rejection and the frequency hopping as the spreading (PN) code. However, even with this interpretation, nothing in paragraph 22 of Xydis indicates that a different PN code would be used for spreading the signal when analog, as contrasted with digital, modulation is utilized. Accordingly, even assuming Xydis discloses use of two selectable transmission schemes (analog or digital modulation) in a single communication system, Xydis does not disclose or suggest using of a different spreading (PN) code for each modulation scheme. Accordingly, the rejections of Claims 1, 21 and 44 should be withdrawn for at least these reasons.

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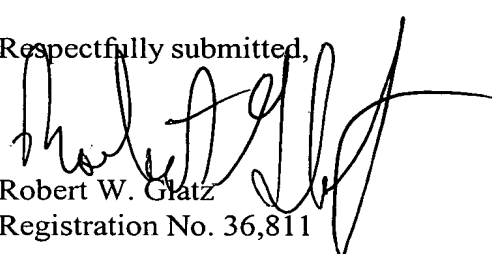
Furthermore, Applicants submit that Xydis states that analog or digital modulation may be used by a frequency hopped system, not that these two modulation approaches may be used interchangeably by a single communication system. In other words, there is no support in Xydis for the rejections inherent assumption that Xydis discloses or suggests switching between analog and digital modulation for different bursts used to send a packet or from packet to packet. Accordingly, the rejections of Claims 1, 21 and 44 should also be withdrawn for at least these additional reasons.

The rejections of dependent Claims 22 and 23 should be withdrawn at least based on the patentability of independent Claim 21 as discussed above.

CONCLUSION

Applicants respectfully submit that, for the reasons discussed above, the reference cited in the present rejections does not disclose or suggest the present invention as claimed. Accordingly, Applicants respectfully request allowance of all the pending claims and passing this application to issue.

Respectfully submitted,

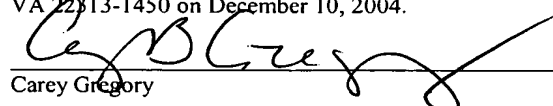


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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on December 10, 2004.



Carey Gregory